

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**RUBY C. BROOKS**

Claimant

VS.

**SWIFT-ECKRICH, INC.**

Respondent

Self-Insured

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Docket No. 213,183

**ORDER**

Respondent appeals from a preliminary hearing order entered by Administrative Law Judge Robert H. Foerschler on September 18, 1997. The order granted claimant's application for preliminary benefits.

**ISSUES**

The sole issue on appeal is whether claimant's cubital tunnel syndrome arose out of and in the course of her employment.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the evidence and considering the arguments, the Appeals Board concludes that the order by the Administrative Law Judge should be affirmed.

Claimant's Application for Hearing and Claim for Compensation lists injuries at the neck, back, arms, and body as a whole occurring in November 1995 and ongoing. Claimant initially sought treatment for injury to her left shoulder. Respondent provided treatment through E. Bruce Toby, M.D., who diagnosed possible rotator cuff tear. Dr. Toby ultimately performed surgery for that rotator cuff tear in May 1996. After the surgery respondent offered claimant accommodated work which claimant declined. In March 1997 the treating physician, Dr. Toby, also performed surgery of the left elbow to correct a cubital tunnel syndrome.

The sole issue on appeal is whether the cubital tunnel syndrome arose out of and in the course of claimant's employment. Respondent contends the evidence fails to satisfy claimant's burden on that issue. A preliminary hearing was held in April 1997. Claimant subsequently submitted a report from Dr. Toby. Respondent indicates it does not object to the report being considered. The report states in pertinent part:

It would be my thought that her work activity would have at least aggravated, if not caused, her cubital tunnel syndrome.

The Appeals Board finds that the report from Dr. Toby, in context with the other testimony in this case, meets claimant's burden for the purpose of preliminary hearing. The Appeals Board, therefore, affirms the decision by the Administrative Law Judge which requires respondent to pay for the treatment by Dr. Toby and orders respondent to pay temporary total disability benefits during the period Dr. Toby considers claimant unable to work as a result of the surgery.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the order dated September 18, 1997, entered by Administrative Law Judge Robert H. Foerschler should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER

c: Mark S. Gunnison, Overland Park, KS  
Mark E. Kolich, Kansas City, KS  
Robert H. Foerschler, Administrative Law Judge  
Philip S. Harness, Director